United States General Accounting Office

GAO

Report to the Honorable
James M. Inhofe, U.S. Senate

July 1998

AVIATION SAFETY

FAA's Use of Emergency Orders to Revoke or Suspend Operating Certificates

GAO/RCED-98-199

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

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July 23, 1998

The Honorable James M. Inhofe
United States Senate

Dear Senator Inhofe:

As provided in the Federal Aviation Regulations (FAR), the Federal Aviation Administration (FAA) is responsible for examining, testing, and periodically inspecting the compliance of airmen, such as pilots, mechanics, and flight engineers, and aviation entities, such as airlines, airports, and repair stations, that seek a certificate to operate. These operating certificates, which can be issued directly by FAA or by a qualified individual to whom the agency has delegated appropriate authority, certify that the individual or entity has the necessary qualifications to perform the duties authorized by the certificate. These duties might include, for example, a pilot's use of a certain type of aircraft, a manufacturer's production of a specific aircraft engine, or a repair station's maintenance of aircraft, engines, or propellers. (See app. I for the types of certificates that FAA issues.)

When FAA detects violations of the FAR by such certificate holders, it has a range of actions it can take to enforce compliance with the regulations, depending on the seriousness of the violation. These actions include (1) administrative actions, such as warning letters or (2) legal actions, which usually involve either assessing a civil penalty (fine) or taking a "certificate action" to suspend or revoke an individual's or entity's operating certificate.[1] FAA may take certificate actions on a nonemergency basis, in which case the certificate holder may continue to operate until the matter is adjudicated. However, if FAA determines that the public interest and safety require immediate action against a certificate holder, the agency can use an emergency order to immediately revoke or suspend the operating certificate.

Since the fatal crashes of ValuJet Flight 592 in May 1996 and TWA Flight 800 in July 1996, FAA's oversight of the aviation community and the agency's enforcement actions in response to violations have come under

[1]A certificate suspension may be for a definite period (e.g., 30 days), or it may be indefinite (e.g., until the holder demonstrates qualifications to hold the certificate). When a certificate has been revoked, the former holder loses any right to use the certificate. See app. II for a detailed description of the process FAA uses to handle emergency and nonemergency certificate actions.

increased scrutiny.[2] While some have criticized FAA for not responding swiftly or forcefully enough to safety violations, others have questioned its haste in using emergency orders to suspend or revoke the certificates that pilots, airlines, and others need to operate.

At your request, we reviewed FAA's use of emergency orders during fiscal years 1990 through 1997. This report provides information on (1) the extent to which FAA used emergency orders, including data on regional variation in their use, the types of certificate holders affected, and the final outcomes of cases initiated using emergency orders; (2) the ways in which changes in FAA's policies might have affected the agency's use of emergency orders; and (3) the time needed for FAA to investigate alleged violations and issue emergency orders.

Results in Brief

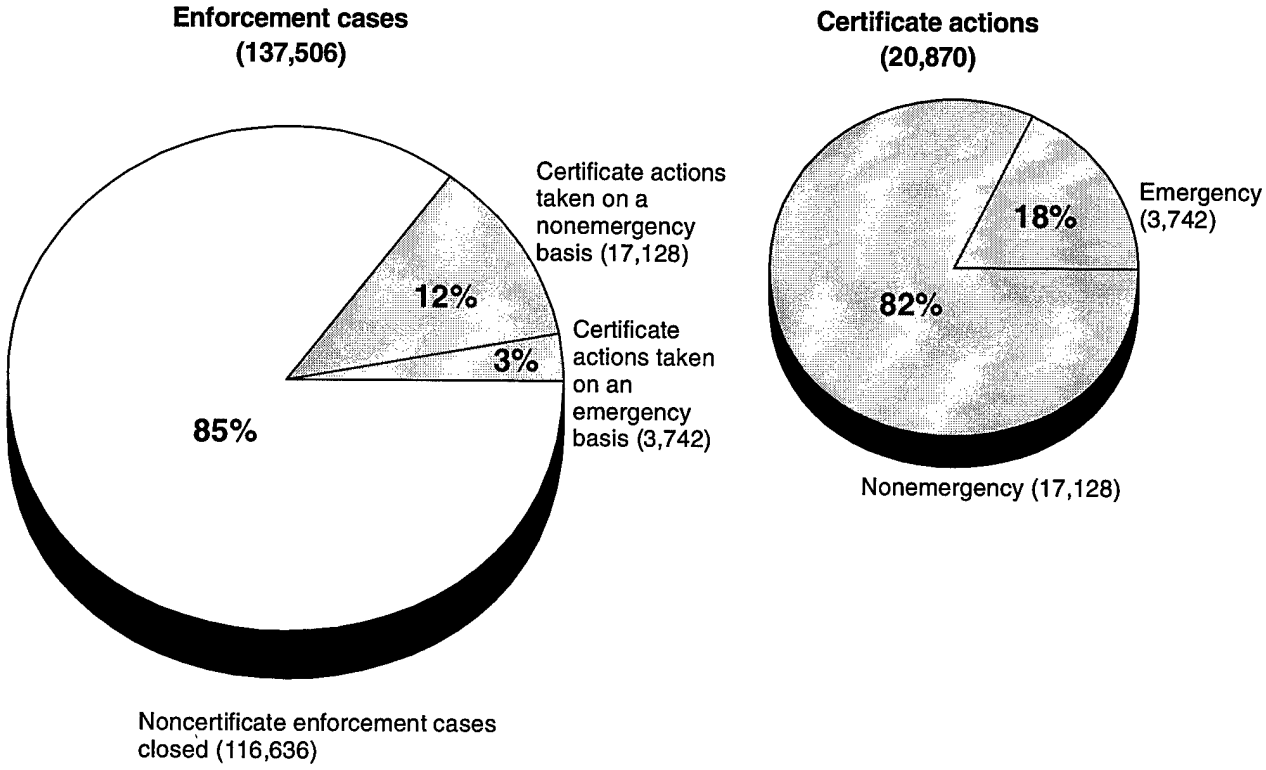
FAA used emergency orders to initiate action to revoke or suspend operating certificates in 3 percent (3,742) of the 137,506 enforcement cases closed during fiscal years 1990 through 1997.[3] (See fig. 1.) As FAA moved to handling less serious enforcement cases through administrative actions rather than certificate actions, the number of certificate actions decreased, and emergency orders came to represent a larger proportion of the more serious certificate actions that remained, increasing from 10 percent in 1990 to an annual average of nearly 20 percent over the following 7 years. Emergency orders as a percentage of certificate actions varied by FAA region, resulting from differences in enforcement practices and from unusual circumstances in an individual case. In fiscal years 1990 through 1997, nearly 60 percent of the emergency orders revoked or suspended pilots' operating certificates or the certificates of their medical fitness to fly. FAA initiated a substantially higher proportion of certificate actions with emergency orders for pilots with commercial operating certificates than for air transport pilots. According to FAA's Deputy Associate Administrator for Regulation and Certification, it is not surprising that a smaller proportion of air transport pilots received emergency orders because they have more initial training and more extensive recurrent training on a regular basis than commercial pilots. Over three-quarters of the enforcement cases initiated using emergency orders resulted in the suspension or revocation of the certificate holder's operating certificate,

[2]See, for example, Aviation Safety: Weaknesses in Inspection and Enforcement Limit FAA in Identifying and Responding to Risks (GAO/RCED-98-6, Feb. 27, 1998).

[3]We restricted our analysis to enforcement cases that FAA closed in fiscal years 1990 through 1997. The enforcement cases that FAA initiates using an emergency order to revoke or suspend an operating certificate may ultimately be resolved in a variety of ways, including the revocation or suspension of a certificate, the imposition of a civil penalty (fine), or the expiration of the certificate. (See table 5.)

and fewer than 5 percent resulted ultimately in FAA's dropping the case (no action) because it determined that no violation was committed or had insufficient evidence to prove a violation.

Figure 1: FAA's Use of Emergency Orders to Initiate Enforcement Cases Closed in Fiscal Years 1990-97



Source: GAO's analysis of data from FAA's Enforcement Information System.

During fiscal years 1990 through 1997, FAA implemented a formal change in its policy on emergency actions that is reflected in the increased number of revocations using emergency orders. In 1990, FAA decided that, for those cases in which revocations are based on a demonstrated lack of qualification to hold the relevant certificate, the certificate generally should be revoked immediately and not after the lengthy appeal process that other nonemergency certificate actions can be subject to. FAA

informally implemented this policy change in 1990 and 1991 before formally incorporating it into its compliance and enforcement guidance in 1992.[4] As a result, FAA initiated 184 revocations using emergency orders in fiscal year 1990, after which this number increased, ranging between 264 and 382 annually.

Although the use of emergency orders is intended to expedite the handling of serious enforcement cases in which operating certificates are revoked or suspended, the time needed for FAA to investigate violations and issue emergency orders varied widely, frequently taking several months or longer. For half of the enforcement cases in fiscal years 1990 through 1997, FAA issued the emergency order within about 4 months after learning of the violation. For the remainder, the time needed to investigate and issue the order ranged from just over 4 months to over 2 years. Since no violation has been established, the certificate holder may continue to operate during this time, that is, to fly or repair aircraft. We did not analyze individual cases to determine why some cases took longer for FAA to investigate and issue the emergency order than others. According to FAA program and legal officials, certain types of cases may take longer because they are complex, involve the falsification of maintenance or training records, or require extensive checking of these records.

Background

When FAA finds that certificate holders have violated aviation regulations, it has the statutory authority to take appropriate action. FAA Order 2150.3A on compliance and enforcement provides guidance on the range of options available for responding to violations. The option chosen depends on such factors as the seriousness of the violation and the violator's prior enforcement history and willingness to comply with regulations. FAA uses administrative actions to document incidents involving minor violations, to request future compliance, and—if appropriate—to document corrective actions violators have agreed to take. Legal actions, such as fines or certificate actions, are FAA's strongest enforcement tools. While FAA uses certificate actions primarily against individual certificate holders (e.g., pilots, mechanics, or flight engineers), it can also take certificate action against such entities as airlines, air taxi operators, or repair stations. FAA can also refer cases to the Department of Transportation's Office of Inspector General or to the appropriate law enforcement agency for criminal prosecution.

[4]FAA Order 2150.3A.

When FAA determines that the public interest and safety require the immediate suspension or revocation of an operator's certificate, the agency can issue an emergency order. An emergency order revoking an operating certificate is the most severe enforcement action that FAA can take against a certificate holder. An emergency order is generally used when a certificate holder is not qualified and may make use of the certificate[5] or demonstrates a lack of care, judgment, and responsibility by, for example, operating an aircraft while under the influence of drugs or alcohol. An emergency order takes effect immediately on issuance. The certificate holder does not have an opportunity to contest the order before it is issued, and, unlike nonemergency certificate actions, the emergency order remains in effect while the certificate holder appeals. Emergency orders can be appealed to the National Transportation Safety Board (NTSB) and the U.S. Court of Appeals. (See app. II for more information on the process for appealing FAA's emergency and nonemergency certificate actions.)

FAA's Use of Emergency Orders

FAA used emergency orders in a small percentage of its enforcement cases. FAA regions varied in their use of emergency orders to initiate certificate actions; these differences appear to result in part from differences in enforcement practices. Nearly 60 percent of the emergency orders revoked or suspended pilot certificates or the medical certificates pilots must also have. Of the cases FAA initiated using emergency orders, over three-quarters ultimately resulted in a suspension or revocation of the certificate.

FAA's Increased Use of Administrative Actions Resulted in a Larger Proportion of Emergency Certificate Actions

Of the 137,506 enforcement cases closed in fiscal years 1990 through 1997, FAA initiated 3 percent using emergency orders. The actual number of emergency orders ranged from a low of 322 in fiscal year 1990 to a high of 573 in fiscal year 1996. On average, FAA closed 468 cases annually in which it had initiated enforcement action using emergency orders. (See table 1.)

[5]If a pilot is in prison or in the hospital, for example, an emergency order would not be needed because the pilot would be unable to use the certificate.

Table 1: Enforcement Cases Closed, Fiscal Years 1990-97

Fiscal year	Number of enforcement cases closed	Number of certificate actions closed	Certificate actions as a percentage of enforcement cases closed	Number of closed cases initiated using emergency orders	Emergency orders as a percentage of certificate actions closed
1990	13,218	3,126	24	322	10
1991	15,341	2,598	17	482	19
1992	16,462	2,873	17	532	19
1993	23,535	3,136	13	487	16
1994	19,034	2,543	13	383	15
1995	17,987	2,185	12	503	23
1996	16,180	2,200	14	573	26
1997	15,749	2,209	14	460	21
Total	**137,506**	**20,870**	**15**	**3,742**	**18**

Source: GAO's analysis of data from FAA's Enforcement Information System.

Since fiscal year 1990, emergency orders have been used to initiate an increasing proportion of certificate actions. As FAA shifted to using administrative actions to handle less serious enforcement cases, its use of certificate actions decreased. Because the number of emergency orders remained relatively constant, emergency orders came to represent a larger proportion of the remaining certificate actions. (See table 1.) According to the Assistant Chief Counsel in the Enforcement Division, the proportion of certificate actions initiated using emergency orders grew largely because, beginning in 1990, FAA used administrative actions more frequently to handle many less serious violations, which decreased the number of certificate actions. Thus, fewer cases are now handled as certificate actions, but they are the more serious cases.

Regional Use of Certificate Actions and Emergency Orders Varied

FAA used emergency orders to initiate 18 percent of its certificate action cases, on average, for fiscal years 1990 through 1997, but three regions initiated from 28 to 38 percent of their certificate actions using emergency orders. (See table 2.) These differences among the regions reflect, among other things, (1) unusually high numbers of emergency orders to suspend or revoke medical certificates in the Eastern, Western-Pacific, and Southwest regions and (2) large numbers of emergency suspensions of mechanic certificates in the Southwest region.

Table 2: Regional Use of Emergency Orders, Fiscal Years 1990-97

Region	Number of certificate actions	Number of closed cases initiated using emergency orders	Number of emergency orders as a percentage of certificate actions
Southwest	2,175	820	38
Eastern	2,000	596	30
Western-Pacific	2,477	703	28
New England	587	147	25
Alaskan	633	142	22
Great Lakes	1,656	326	20
Southern	3,986	560	14
Central	1,303	182	14
Northwest	1,501	221	15
Other[a]	4,552	45	1
Total	**20,870**	**3,742**	**18**

[a]Includes enforcement actions opened by FAA's Aeronautical Center, European region, and headquarters, as well as those enforcement actions based on violations voluntarily self-disclosed to FAA by aviation entities.

Source: GAO's analysis of data from FAA's Enforcement Information System.

While most regions issued no more than a handful (one to five) of emergency orders to revoke or suspend medical certificates each year in fiscal years 1990 through 1997, the Southwest region averaged nearly a dozen annually, and the Eastern and Western-Pacific regions averaged almost 25.[6] (See table 3.) Officials at these offices and at FAA headquarters were unsure why these regions initiated so many more emergency orders on medical certificates than did the other regions. Differences in enforcement practices in FAA's regional offices apparently may affect whether emergency orders are used to revoke or suspend a medical certificate. One regional counsel suggested that the staff in her region were simply efficient in processing these cases, while in other regions, the certificates of pilots that do not meet requirements may simply be allowed to expire. (Medical certificates must be renewed every 6 months to 3 years, depending on the type of pilot.) Another regional counsel suggested that some regions may handle medical certificate cases as nonemergency certificate actions.

The Deputy Associate Administrator for Regulation and Certification suggested that the higher numbers of medical certificates suspended or

[6]The FAR also requires that pilots and instructors have appropriate medical certificates certifying their current health condition.

revoked using emergency orders in certain regions may reflect the larger population of pilots in those regions. We agree that regions that have a higher number of pilots might have proportionately higher numbers of emergency orders against pilots' medical certificates. However, we do not believe this fully explains the differences among FAA's regions. For example, the Southern region, which FAA officials told us had the largest number of general aviation pilots, had only one-sixth as many emergency revocations or suspensions as the Western-Pacific and Eastern regions.

Table 3: Emergency Orders to Revoke or Suspend Medical Certificates by Region, Fiscal Years 1990-97

Region	Number of emergency orders to revoke or suspend medical certificates
Western-Pacific	197
Eastern	194
Southwest	93
Great Lakes	43
Southern	33
Central	20
New England	16
Northwest Mountain	15
Alaskan	11
Other[a]	3
Total	**625**

[a]Includes Aeronautical Center and European region.

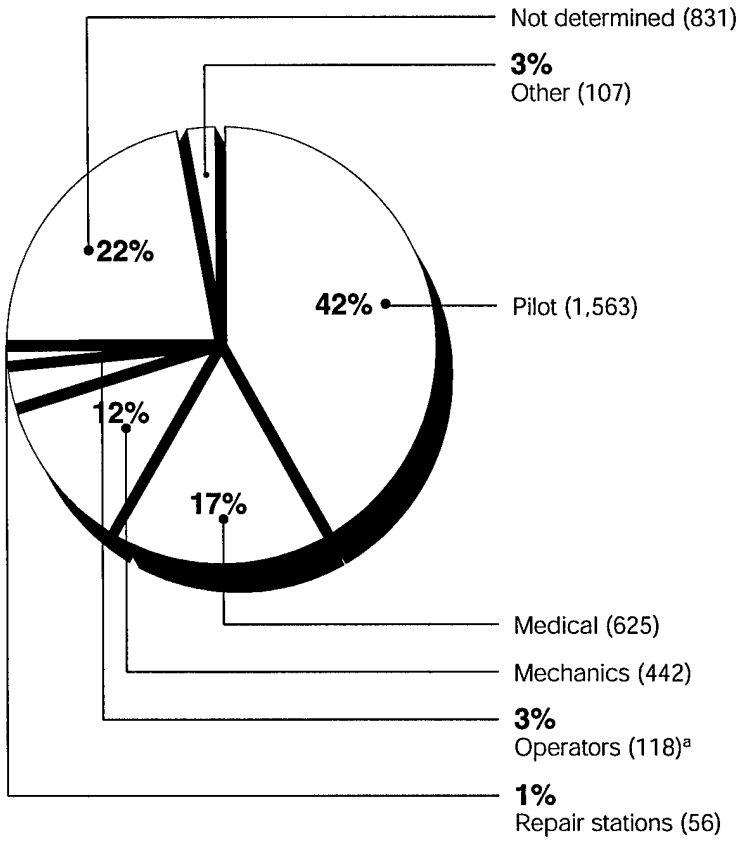
Source: GAO's analysis of data from FAA's Enforcement Information System.

FAA was better able to clarify why the Southwest region issued nearly 40 percent (174) of the 442 emergency orders to revoke or suspend mechanic certificates in fiscal years 1990 through 1997. Other regions revoked or suspended mechanic certificates between 6 and 75 times during this period. According to the information provided by the Flight Standards Service in FAA headquarters and the legal staff in the Southwest region, many of these cases resulted from problems with a designated examiner with delegated authority from FAA who did not properly administer tests to ensure that mechanics were qualified. His actions necessitated the reexamination of nearly 200 mechanics; those who did not retake or did not pass the examination had their mechanic certificates suspended on an emergency basis.

Pilots Were Most Often Affected by Emergency Orders

The 3,742 emergency orders to revoke or suspend aviation certificates in fiscal years 1990 through 1997 affected both individual pilots and mechanics and aviation entities such as repair stations and airport operators. Of the emergency orders, nearly 60 percent affected pilots by revoking or suspending 1,563 pilot certificates and 625 medical certificates. FAA also issued emergency orders to revoke or suspend 442 mechanics' certificates and 118 certificates of the operators of air carriers, air taxis, airports, and other aviation entities. (See fig. 2.) These numbers reflect the number of certificates issued—there are many more pilots (622,261 during 1996) than air carriers or air taxis (3,057 during 1996). In addition, pilots must have at least two types of operating certificates—pilot and medical. (See app. III for annual data on FAA's use of emergency orders by certificate type.)

Figure 2: Types of Certificate Holders Affected by Emergency Orders, Fiscal Years 1990-97



[a]Operators include, for example, airport operators, agricultural operators, scheduled and on-demand air carriers, and scheduled cargo carriers.

Source: GAO's analysis of data from FAA's Enforcement Information System.

FAA used emergency orders to initiate certificate action against a similar proportion of private pilots and pilots holding commercial and air

transport certificates. (See table 4.) FAA issued emergency orders to commercial pilots nearly 75 percent more often than it did to air transport pilots, although the number of pilots in each group is similar—129,187 commercial pilots and 127,486 air transport pilots in 1996. According to FAA's Deputy Associate Administrator for Regulation and Certification, it is not surprising that a smaller proportion of air transport pilots, particularly those flying for major airlines, receive emergency orders because they have more initial training and more extensive recurrent training on a regular basis than do commercial pilots.

Table 4: Types of Pilot Certificates Revoked or Suspended Using Emergency Orders, Fiscal Years 1990-97

Types of pilot certificate	Number of actions
Private pilot	712
Commercial pilot	422
Air transport pilot	242
Student pilot	111
Flight instructor	68
Instrument rating[a]	8
Total	**1,563**

[a]An instrument rating is an integral part of an air transport pilot's certificate and is mandatory for commercial pilots flying further than a specified distance.

Source: GAO's analysis of data from FAA's Enforcement Information System.

Most Certificate Actions Initiated Using Emergency Orders Resulted in Revocations or Suspensions

A high percentage of the certificate actions initiated using emergency orders ultimately resulted in revocations or suspensions. Of the 2,311 certificate revocations initiated using emergency orders in fiscal years 1990 through 1997, 86 percent resulted in the individual's or entity's losing the certificate. Specifically, 72 percent of the emergency revocations ultimately resulted in the certificate's being revoked, and an additional 14 percent led to a suspension of the certificate. Less than 4 percent of the actions initiated as emergency revocations ultimately resulted in the case being dropped (no action). Similarly, of the 1,431 certificate suspensions initiated using emergency orders, 62 percent ultimately resulted in the suspension of the certificate, an additional 2 percent resulted in revocation, and 6 percent were ultimately dropped (no action). (See table 5.) While the final resolution of 240 of the cases could not be determined from the available data, the vast majority of the remaining cases were resolved by allowing the certificate to expire or by having operators successfully complete a reexamination of their qualifications. (See app. V.)

Table 5: Recommended Type of Emergency Action Compared With Final Action Taken, Fiscal Years 1990-97

	Emergency action initially recommended		
Final action taken	**Revocation**	**Suspension**	**Total**
Certificate revoked	1,656	35	1,691
Certificate suspended	322	887	1,209
No action	83	87	170
FAA action reversed	43	9	52
Other[a]	207	413	620
Total	**2,311**	**1,431**	**3,742**

[a]See app. V for a complete analysis of other final actions taken in response to emergency orders.

Source: GAO's analysis of data from FAA's Enforcement Information System.

According to FAA officials in the Enforcement Division in the Office of the Chief Counsel and in Flight Standards, the high numbers of emergency orders that were upheld for suspension and revocation reflects the fact that the agency takes emergency orders, particularly revocations, very seriously and is reluctant to initiate them without clear and convincing evidence. The Acting Director and other staff in the Flight Standards Service, the Assistant Chief Counsel in FAA's Enforcement Division, and the nine regional counsels strongly agreed that emergency revocations are used in cases in which individuals or entities lacked the qualifications for the certificate or demonstrated a lack of care, judgment, and responsibility by, for example, falsifying material aviation records or operating aircraft while under the influence of drugs or alcohol. The Acting Director of the Flight Standards Service said that requests to initiate emergency revocations against individuals are scrutinized at the local and division levels within Flight Standards before being referred to legal staff for action. Additionally, regional legal and program office staff provide information in cases against air carriers and repair stations to the Office of the Chief Counsel and the Associate Administrator for Regulation and Certification for review and concurrence. In most cases, the Office of the Deputy Administrator and the Office of the Administrator of FAA are briefed on the recommendation before an emergency order is issued.

Redefinition of Emergency Has Affected FAA's Use of Emergency Revocations

A change to FAA's policy[7] broadened the circumstances in which the agency uses emergency orders. Although the policy change applied to both emergency revocations and emergency suspensions, FAA officials focused on the rule's impact on the agency's use of revocations. According to several regional counsels we interviewed, prior to 1990, many revocation actions had been taken on a nonemergency basis. In 1990, FAA concluded that an emergency order is appropriate when a revocation is warranted in the interest of public safety because the certificate holder lacks qualifications. Under these conditions, the revocation should be taken immediately unless it is unlikely that the holder will use the certificate. The Assistant Chief Counsel of the Enforcement Division pointed out that, if the revocation is not taken immediately, the certificate holder can continue to operate for months or even years until the appeal process is completed. Furthermore, because of FAA's responsibility to protect the public safety, such potentially unsafe operating situations cannot be allowed to continue for a long period of time. FAA informally implemented this policy change in 1990 and 1991 before formally incorporating it into FAA Order 2150.3A in February 1992. As a result, FAA increased the use of emergency orders to initiate revocations from 184 in fiscal year 1990 to between 264 and 382 annually thereafter. (See table 6.)

Table 6: FAA's Use of Emergency Revocations, Fiscal Years 1990-97

Fiscal year	Revocations	Total emergency orders[a]
1990	184	322
1991	284	482
1992	327	532
1993	291	487
1994	281	383
1995	264	503
1996	382	573
1997	298	460
Total	**2,311**	**3,742**

[a]Includes emergency suspensions and emergency revocations.

Source: GAO's analysis of data from FAA's Enforcement Information System.

[7]FAA Order 2150.3A.

For Half of the Cases, Months Elapsed Between FAA's Learning of the Violation and Issuing the Emergency Order

The use of emergency orders is intended to expedite the handling of serious certificate actions. For half of the 3,742 emergency actions we analyzed, however, more than 4 months elapsed between the time FAA learned of the violation and the time it issued the emergency order. During this period, FAA inspection staff investigated the violation, reached a preliminary determination that an emergency suspension or revocation was warranted, and then transferred the case to legal staff for the review and preparation of the case and the issuance of the emergency order. In most cases, FAA may not envision the use of an emergency order at the outset of the investigation. Time is needed to investigate the facts and evaluate whether the evidence demonstrates a lack of qualification sufficient to support the issuance of an emergency order. The time that elapses between the violation and the issuance of the emergency order raises questions about safety because the certificate holder, such as a pilot or mechanic, can continue to operate until the emergency order is issued. In addition, some aviation attorneys in the private sector question whether it is appropriate or necessary for FAA to handle some cases as emergencies, especially if the violations occurred years before. These two positions reflect the tension between FAA's need to act swiftly in cases that present an immediate threat to safety or a demonstrated lack of qualifications and to act prudently to protect the rights of certificate holders by thoroughly investigating alleged violations before revoking or suspending a certificate that may be essential to the livelihood of an individual or the employees of an airline, repair station, or other aviation entity.

For Half of the Enforcement Cases That Involved Emergency Orders, More Than 4 Months Elapsed Between FAA's Learning of the Violation and Issuing the Emergency Order

For half of the enforcement cases in which FAA used emergency orders in fiscal years 1990 through 1997, more than 4 months elapsed between the time FAA learned of the violation and the time it issued the emergency order.[8] Once FAA learned about the violations, it completed its investigation, prepared the case, and issued the emergency order within 10 days for 4 percent of the cases and within a month for 11 percent of the cases. Most cases, however, required more than 4 months (132 days) from the date of violation until FAA issued the emergency order. (See table 7.) Cases remained in the program offices for investigation for most of this

[8]Our analysis focused on the time FAA spent between learning of the violation and issuing the emergency order, rather than on the length of time between the violation and the last legal action taken to close out the case. We chose this time frame because the agency has more control over investigation, case preparation, and the issuance of the emergency order than over the time it learns of the violation or the amount of time it must wait before all appeals are completed so that the case is resolved and can be closed out. If the time needed for FAA to learn of the violation and to resolve the case after the emergency order was issued is included, the period of analysis would be over 13 months (401 days) for half the cases. (See table IV.1.) Appendix IV presents data on the time needed to accomplish each major step in the issuance of an emergency order, from learning about the violation to the investigation, preparation of the case by legal staff, and case resolution. In addition, this appendix presents additional examples of reasons for delays at various steps in the process.

time. (See tables IV.3 and IV.4 in app. IV for times spent on investigation and case preparation.)

Table 7: Number of Days Between the Date FAA Learned About the Violation and the Date It Issued the Emergency Order, by Percent of Cases, Fiscal Years 1990-97

Amount of time elapsed[a]	Percent of cases
10 days or less	4
30 days or less	11
180 days or less	65
365 days or less	86

[a]The median time elapsed was 132 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

Source: GAO's analysis of data from FAA's Enforcement Information System.

While it may be clear as soon as FAA learns of some types of violations that they merit the use of an emergency order, other cases may not be so clear-cut. According to the Deputy Associate Administrator for Regulation and Certification, the use of an emergency order is not necessarily envisioned when FAA first learns of a violation and initiates its investigation. She added that only after investigation do the FAA inspector and managers make a determination in some cases that an emergency order is warranted because of a lack of qualifications on the part of the certificate holder. She said that FAA generally processes emergency cases very quickly, often within a few days.

While FAA's databases do not have a field for recording when inspection staff initially determine that an emergency order is warranted, the Enforcement Information System (EIS) provides some data on how long it takes to issue an emergency order once inspection staff recommend that action. Specifically, EIS tracks the day FAA's legal staff receive a case and the type of emergency action recommended by the program office. In about one-third of the cases in which inspection staff recommended emergency suspension or revocation, FAA's legal staff issued the emergency order within 10 days of receiving the case. Half of the emergency orders were issued in 20 days or less, 94 percent took 6 months or less to issue, while the remaining 6 percent took longer than 6 months to issue. (See table IV.5.)

Without an extensive review of individual cases—which was beyond the scope of our review—it is impossible to determine how much time FAA expended on investigation, particularly in more complex cases. According to the Acting Director of the Flight Standards Service, inspectors conduct

investigations while simultaneously carrying out many other responsibilities, such as accident investigations and inspections. Similarly, FAA legal staff have many nonenforcement responsibilities, including work on procurement issues and contract disputes. In addition, some complex cases may require more time for legal review, while other cases may require additional investigation to have sufficient evidence to support the issuance of an emergency order, according to the Assistant Chief Counsel for Enforcement in FAA's Office of the Chief Counsel. The fact remains, however, that months often elapse between the occurrence of a violation, the time FAA learns of that violation, and the date the agency issues an emergency order of suspension or revocation. During this time, a certificate holder who lacks qualifications or who represents a threat to safety can continue to operate.

FAA Regions Varied Widely in the Number of Days Used to Investigate Violations and Issue Emergency Orders

FAA regions varied widely in the number of days used to investigate the violations that led to the issuance of emergency orders in fiscal years 1990 through 1997. Four of FAA's regions (Aeronautical Center, Alaskan, Central, and Northwest Mountain) issued emergency orders within about 2 to 3 months of learning about violations in half the cases they handled. In contrast, other regions (Eastern, European, Great Lakes, New England, Southern, Southwest, and Western-Pacific) took anywhere from almost 4 months to over 8 months to issue the emergency order. (See table 8.)

Table 8: Information on the Number of Emergency Orders Issued and the Time Elapsed Between Learning About a Violation and Issuing an Emergency Order, by Region, Fiscal Years 1990-97

	Region[a]										
	AC	AL	CE	EA	EU	GL	NE	NM	SO	SW	WP
Number of emergency orders[b]	24	141	182	594	21	325	147	222	558	818	703
Median[c] number of days until issuance	79	65	56	253	245	140	128	76	111	138	166
Time from learning about a violation to issuing emergency order (cumulative percent)											
10 days or less	0%	10%	7%	2%	0%	5%	3%	4%	7%	5%	1%
30 days or less	0%	23%	25%	6%	0%	11%	10%	13%	14%	13%	4%
180 days or less	83%	89%	89%	41%	43%	65%	61%	89%	75%	72%	54%

[a]Regional abbreviations: AC=Aeronautical Center, AL=Alaskan, CE=Central, EA=Eastern, EU=European, GL=Great Lakes, NE=New England, NM=Northwest Mountain, SO=Southern, SW=Southwest, WP=Western-Pacific

[b]Number of emergency orders does not total to 3,742 because of missing data entries.

[c]The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.

Source: GAO's analysis of data from FAA's Enforcement Information System.

Much of the variation occurred in the time needed for investigation. For example, the Central region turned half its cases over to FAA's regional legal staff to prepare the emergency order within 40 days of learning of the violation, while half the cases in the Eastern region remained with the program office for over 6 months (197 days). (See table 9.) According to the Acting Director of the Flight Standards Service, such variations in the time needed for investigation may reflect differences in the type and complexity of the cases handled. For example, he said that the Eastern region may need additional time to investigate cases generated by the three international field offices located within its boundaries. He also suggested that the large number of repair stations and manufacturing operations in the Eastern region produce many cases that can be complex to investigate.

Table 9: Information on the Number of Emergency Orders Issued and Investigation Times, by Region, Fiscal Years 1990-97

	Region[a]										
	AC	**AL**	**CE**	**EA**	**EU**	**GL**	**NE**	**NM**	**SO**	**SW**	**WP**
Number of emergency orders[b]	24	141	182	594	21	325	147	216	558	818	703
Median[c] number of days for investigation	53	56	40	197	112	94	100	64	71	74	85
Investigation time (cumulative percent)											
10 days or less	4%	11%	10%	3%	5%	7%	3%	5%	6%	10%	3%
30 days or less	21%	28%	37%	10%	14%	18%	13%	22%	20%	22%	14%
180 days or less	92%	92%	91%	49%	91%	80%	65%	92%	83%	86%	71%

[a]Regional abbreviations: AC=Aeronautical Center, AL=Alaskan, CE=Central, EA=Eastern, EU=European, GL=Great Lakes, NE=New England, NM=Northwest Mountain, SO=Southern, SW=Southwest, WP=Western-Pacific

[b]Number of emergency orders does not total to 3,742 because of missing data entries.

[c]The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.

Source: GAO's analysis of data from FAA's Enforcement Information System.

Differing Perspectives on the Emergency Nature of FAA's Enforcement Actions

FAA often spends months on investigating violations, determining whether they merit emergency action, preparing cases, and issuing emergency orders. We interviewed a number of aviation attorneys from the private sector who raised key questions about FAA's use of emergency orders:[9] Do the cases really need to be handled as emergencies, especially if the violations occurred years before? Does FAA use emergency orders to handle cases that it might otherwise not be able to prosecute? Does FAA use the planned issuance of an emergency order to pressure certificate holders into voluntarily surrendering their operating certificates? We discussed these issues with officials from FAA and NTSB. They provided a variety of opinions that reflected the tension between FAA's responsibility to act prudently in investigating thoroughly before revoking or suspending a certificate and its responsibility to act swiftly in cases that present an immediate threat to safety or a demonstrated lack of qualifications. The scope of our review of FAA's use of emergency orders did not permit the kind of case analysis that would determine whether FAA had struck the appropriate balance between these competing responsibilities.

[9]The private sector attorneys we interviewed, who have defended individuals or aviation entities in cases in which FAA used emergency orders to revoke or suspend their certificates, included attorneys who have prior experience with FAA's Office of the Chief Counsel, are members of the NTSB bar, and/or serve on state aviation commissions.

Several of the private sector attorneys questioned whether it is appropriate for FAA to use emergency orders for some violations that are years old or for cases that have required months to investigate and issue. While these attorneys acknowledged the need for an enforcement tool that allows FAA to act swiftly when aviation safety is a concern, one questioned the immediacy of the safety threat in some violations he has handled and another questioned whether FAA uses emergency orders to process violations when the investigation is not completed promptly.

However, FAA officials cited situations involving older violations or long investigation time frames that they believe merited the use of emergency orders. For example, the Manager of the Compliance and Enforcement Branch in FAA's Civil Aviation Security Division said that FAA may not learn for months or years that an inactive pilot who has returned to flying has had several drunk driving convictions. Although the violations are older, he said that they raise potential safety issues, as well as questions about the pilot's judgment if the pilot has falsified information about these convictions when applying for a medical certificate or has failed to report these convictions to FAA within 60 days, as required. Similarly, the Acting Director of the Flight Standards Service said that some complex cases involving the use of unapproved parts for aircraft repairs may take months or years to investigate before FAA has sufficient evidence to initiate an emergency order. He said that, once the evidence is clear and convincing, the case becomes an emergency if it potentially affects safety. According to the Assistant Chief Counsel in FAA's Enforcement Division, FAA's position is that the revocation must be taken immediately in cases like these. For such situations, he said that FAA prefers to use an emergency action rather than allowing the certificate holder to operate for months or years until the case could be resolved using a nonemergency certificate action.

Two aviation attorneys we interviewed suggested that FAA may use emergency orders in cases in which the agency has exceeded NTSB's 6-month time frame[10] for processing cases against individual airmen, mechanics, or other certificate holders. For example, one attorney cited a case in which a policeman had notified FAA of alleged alcohol use by a pilot on the night of the incident, but FAA did not issue the emergency order until 18 months later. NTSB's rule states that FAA must notify the alleged violator of the violation within 6 months of the date of the violation. In an emergency case, the emergency order itself fulfills the notification requirement. Under NTSB's rule, the case must generally be

[10]49 C.F.R. section 821.33.

dismissed after 6 months. However, NTSB has no deadline for initiating cases when an individual's basic qualifications to hold the operating certificate are in question. If FAA shows in nonemergency cases that it had good cause for its delay in notifying the violator, NTSB can determine that the case is not too old and hear it. According to the Manager of the Compliance and Enforcement Branch in FAA's Civil Aviation Security Division, NTSB sometimes makes this determination if FAA learns about the violation well after it occurred. He said that NTSB's judges have heard, and FAA has prevailed in, several recent cases in which FAA did not learn about pilots' multiple drunk driving convictions until many months after they had occurred.

FAA sometimes allows individuals or aviation entities to voluntarily cease operations rather than face emergency revocation of their certificates.[11] Several FAA regional counsels interviewed said that small carriers or repair stations in their regions have occasionally done so.[12] As one regional counsel explained, when a certificate holder voluntarily ceases operations and negotiates a consent order with the agency, FAA inspectors can focus on monitoring the entity's efforts to come back into compliance rather than on preparing a legal case against the entity. The Assistant Chief Counsel in FAA's Enforcement Division characterized this approach as less harsh than revoking a carrier's certificate—an approach that could have more serious, long-term economic consequences for the carrier because it must reapply to begin operations after its certificate has been revoked.

Two of the aviation attorneys we interviewed raised questions about the appropriateness of an aviation entity voluntary surrendering its operating certificate when confronted with the probable issuance of an emergency order. One attorney suggested that the notification of the probable issuance of an emergency order might be a way for FAA to avoid the due process that would be required for a nonemergency certificate action, for which hearings are held before a certificate is revoked or suspended. One attorney suggested that it might be appropriate for FAA to issue a letter of investigation and give the aviation entity 10 days to prepare a formal response. FAA does not concur that such notification is needed because certificate holders generally receive a notice of investigation when the agency initiates its investigation, according to FAA's Deputy Associate

[11]FAA's database does not track information on the number of certificates voluntarily surrendered by individuals or aviation entities. Thus, FAA was unable to provide data on how many individuals or entities had voluntarily surrendered pilot, medical, or operating certificates.

[12]Aviation Safety: Weaknesses in Inspection and Enforcement Limit FAA in Identifying and Responding to Risks (GAO/RCED-98-6, Feb. 27, 1998).

Administrator for Regulation and Certification. According to the Assistant Chief Counsel in FAA's Enforcement Division and the Acting Director of the Flight Standards Service, once evidence of a potentially serious safety situation or lack of qualifications has been gathered, FAA would be remiss in allowing the individual or entity to continue to operate.

Conclusions

FAA's emergency authority exists to provide the agency with a mechanism for acting swiftly in cases in which aviation-related activities jeopardize public safety or an operator's qualifications are in question. In responding to violations of aviation safety and security regulations, FAA uses emergency orders rarely—in only 3 percent of enforcement cases. The time needed to investigate violations and issue emergency orders has raised some concerns about the urgency and diligence with which FAA pursues these serious certificate actions. These concerns reflect the need for FAA to strike a delicate balance in each case between prompt action to protect safety and judicious action to protect the rights and, frequently, the livelihood of a certificate holder. In addition, our analysis has raised questions about the consistency with which certain types of violations are handled across FAA's regions. How well FAA achieves balance and consistency can ultimately be judged only through a review of individual cases, a level of review that was beyond the scope of this study.

Nevertheless, FAA's historical success in sustaining emergency actions through internal and external review can be read as indirect evidence of the appropriateness of the initial decision to use its emergency powers. Most cases begun as emergency actions eventually result in a cessation of operations through the suspension, revocation, or expiration of the certificate. Very few of these cases are later dropped because FAA determines that no violation was committed or has insufficient evidence to prove a violation.

Agency Comments

We provided FAA with a draft of this report for its review and comment. We met with FAA officials, including the Deputy Associate Administrator for Regulation and Certification, the Acting Deputy Director of the Flight Standards Service, and officials from the Office of the Chief Counsel and the Office of Civil Aviation Security Operations. FAA generally concurred with the facts presented and provided clarification on how the investigative process works. Specifically, FAA said that the number of days elapsed between FAA's learning of a violation and issuing an emergency order should not be equated with the time needed to process an

emergency order. FAA explained that when it first investigates a violation, it may not even envision an emergency order, and only makes the decision after an investigation, when it has determined that a lack of qualifications or other immediate threat to safety warrants an emergency order. Even then, FAA explained, the recommended emergency order must be reviewed by legal staff, and additional investigation may be required before FAA issues the emergency order. FAA also provided additional possible explanations for the regional variations we observed in issuing emergency orders, and for the number of emergency orders issued to pilots. For example, we noted FAA's observation that the higher numbers of medical certificates suspended or revoked using emergency orders in certain regions may reflect the larger population of pilots in those regions. We added information or revised the report, where appropriate, to reflect these suggestions.

Scope and Methodology

To determine the extent to which FAA used emergency actions in fiscal years 1990 through 1997, we analyzed data from FAA's Enforcement Information System (EIS) database. We also used this database to analyze the types of certificate holders affected by these emergency orders and the time frames for issuing the orders. While we were unable to verify the accuracy of all the data FAA provided, we did undertake several validation procedures to ensure the quality of the data. First, we performed extensive checks of the internal consistency of EIS in the fields used. In several cases, we uncovered blank fields and coding errors. We discussed the resolution of these discrepancies with the FAA staff responsible for the database. Second, we reviewed available information from an internal FAA study on EIS in evaluating the reliability of the data we used.

We discussed our findings, the circumstances under which FAA uses emergency orders, and changes to FAA Order 2150.3A that might have affected the agency's use of emergency orders for fiscal years 1990 through 1997 with the following FAA personnel: the Assistant Chief Counsel and other staff in FAA's Enforcement Division, all nine counsels in FAA's regions, the Acting Director of the Flight Standards Service and members of his staff, the Manager of the Compliance and Enforcement Branch in the Civil Aviation Security Division, and the managers of the Medical Specialties and Aeromedical Certification Divisions in the Office of Aviation Medicine. In addition, we discussed the appeals process with NTSB's Deputy General Counsel. We also discussed FAA's use of emergency orders with several aviation attorneys from the private sector. These attorneys, who have defended individuals or aviation entities in cases in

which FAA used emergency orders to revoke or suspend their certificates, had experience with FAA's Office of the Chief Counsel, are members of the NTSB bar, and/or serve on state aviation commissions.

We conducted our review from February 1998 through June 1998 in accordance with generally accepted government auditing standards.

As you requested, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. We will then send copies to the appropriate congressional committees; the Secretary of Transportation, the Administrator, FAA; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

If you have any questions about this report or need additional information, please call me at (202) 512-3650. Major contributors to this report are listed in appendix VI.

Sincerely yours,

Gerald L. Dillingham

Gerald L. Dillingham
Associate Director,
Transportation Issues

Contents

Tables

Figures

Abbreviations

EIS	Enforcement Information System
FAA	Federal Aviation Administration
FAR	Federal Aviation Regulations
NTSB	National Transportation Safety Board

Types of Operating Certificates Issued by FAA

Type of certificate	Certificate holder
Airman certificate	Pilot, mechanic, flight engineer, aircraft dispatcher, or air traffic controller tower operator
Air carriers	Individual operator receives certification that the air carrier is properly equipped and able to operate safely under regulations and standards
Type certificate	Aviation designer or manufacturer to certify that an aircraft, aircraft engine, propeller, or certain appliances meet regulations and minimum standards
Production certificate	Aviation manufacturer authorized to produce a duplicate of an aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued
Airworthiness certificate	Registered owner of an aircraft is certified that the aircraft conforms to its type certificate and is in condition for safe operation
Airport operating certificate	Individual airport operator certified that the facility is properly and adequately equipped and able to operate safely under the regulations and standards
Air agencies	Civilian school certified to offer training in flying or aircraft maintenance. Repair station and repairmen are certified to repair, alter, and maintain aircraft, aircraft engines, propellers, and appliances
Air navigation facilities	Facilities used in the aid of air navigation are certified to operate a landing area, a light, equipment for disseminating weather or location information, or structures for guiding or controlling aircraft during takeoff, flight, or landing

Source: Code of Federal Regulations.

FAA's Process for Appealing Emergency and Nonemergency Certificate Actions

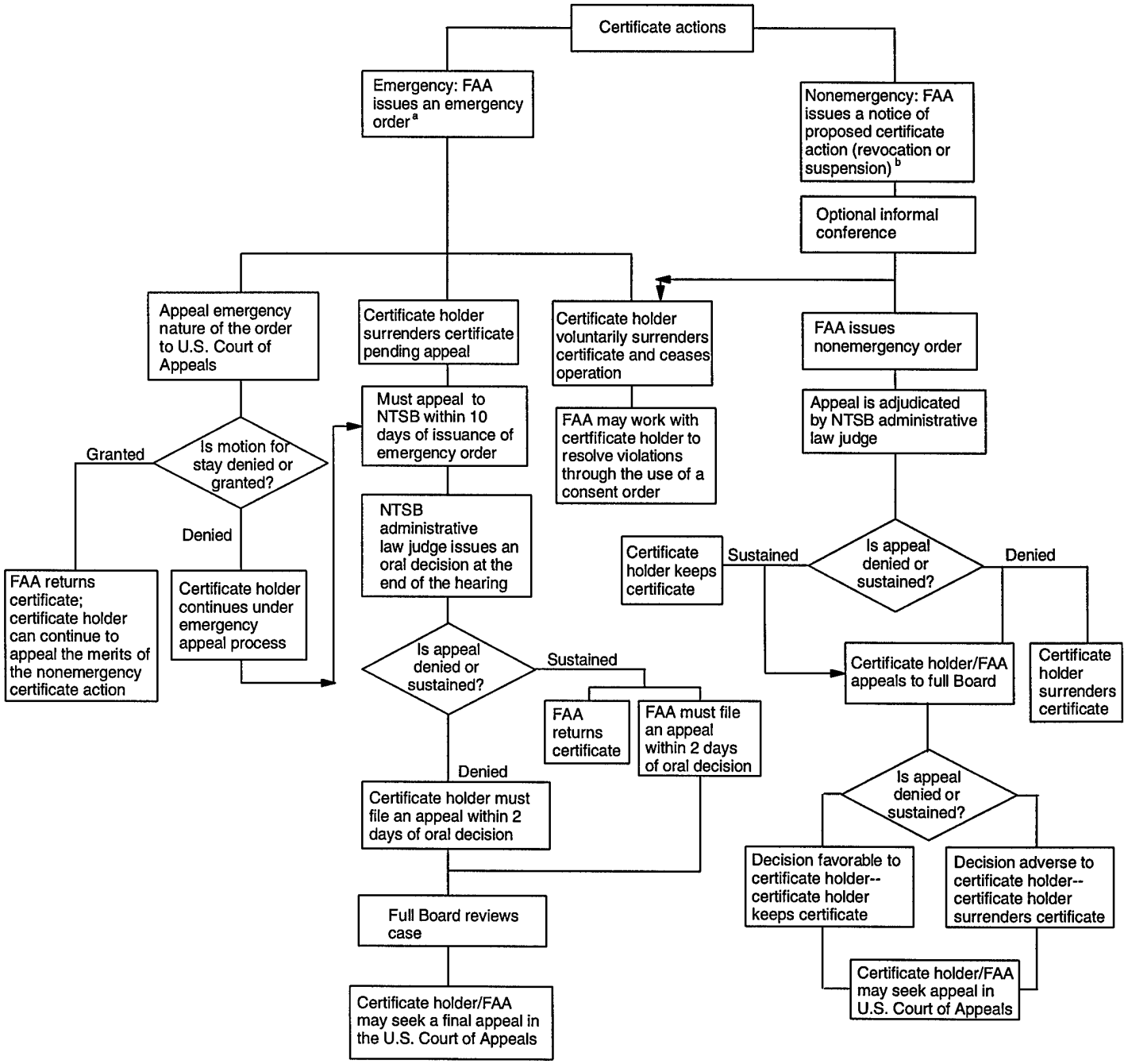
Certificate holders have several options for appealing nonemergency and emergency certificate actions. Certificate actions are adjudicated by a National Transportation Safety Board (NTSB) administrative law judge. The certificate holder may then appeal the case before the full Board or seek review in a federal court of appeals. In the case of a nonemergency action, the certificate holder may continue to operate until the appeal process has been completed. In contrast, an emergency order takes effect on issuance. The certificate holder does not have the opportunity to contest the order before it is issued, and, unlike nonemergency certificate actions, the emergency order remains in effect while the certificate holder appeals.

When faced with an emergency order, a certificate holder has several appeal options. First, the certificate holder can appeal the emergency nature of the order. The certificate holder may seek a direct review of the Federal Aviation Administration's (FAA) emergency determination by a federal court of appeals.[1] In such cases, the certificate holder petitions the court for a review of the emergency order or seeks a stay of the order.[2] According to the Assistant Chief Counsel in FAA's Enforcement Division, such cases are generally decided by the federal court of appeals within 5 to 7 working days. The certificate holder may also appeal the emergency order to NTSB. The certificate holder must appeal within 10 days after receiving the emergency order from FAA. NTSB is required to set a hearing date no later than 25 days after the certificate holder received the emergency order. The presiding administrative law judge's initial decision is made orally at the end of the hearing and is final unless appealed. Any appeal by the certificate holder or FAA of the initial decision must be filed with NTSB within 2 days of the hearing, and the entire matter must be resolved within 60 days of the date on which the FAA Administrator advised NTSB of the emergency nature of the order. Further appeals are available to both FAA and the certificate holder in the federal courts of appeals. Figure II.1 shows the steps in initiating and appealing an emergency order.

[1] 49 U.S.C. section 46110.

[2] FAA's use of emergency revocation orders is the subject of proposed legislation that would provide the certificate holder with the right to appeal the emergency nature of a revocation order before NTSB. This legislation adds a requirement for FAA to show just cause for bringing an emergency revocation action against a certificate holder. (See S. 842, introduced on June 5, 1997, and H.R. 1846, introduced on June 10, 1997.)

Figure II.1: Steps for Initiating and Appealing Emergency Orders



[a]Must be resolved within 60 days of the date the FAA Administrator notifies NTSB of the emergency order.

[b]FAA must initiate action by sending the violator a notice of proposed certificate action within 6 months from the date of violation, otherwise the case is dismissed.

Source: FAA Order 2150.3A.

FAA's Use of Emergency Orders to Initiate Actions by Certificate Type, Fiscal Years 1990-97

	Fiscal year								
Type of certificate	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**Total**
Pilot	127	194	226	204	193	166	246	207	1,563
Mechanic	13	38	55	44	37	111	60	84	442
Medical	71	125	103	81	38	49	102	56	625
Operator[a]	19	22	23	14	13	15	5	7	118
Repair Station	6	11	7	8	6	4	8	6	56
Other	12	14	10	12	11	19	16	13	107
Unknown[b]	74	78	108	124	85	139	136	87	831
Total	**322**	**482**	**532**	**487**	**383**	**503**	**573**	**460**	**3,742**

[a]Operators include, for example, airport operators, agricultural operators, scheduled and on-demand air carriers, and scheduled cargo carriers.

[b]FAA's data did not include a certificate type for these actions.

Source: GAO's analysis of data from FAA's Enforcement Information System.

Elapsed Time for Investigating and Issuing Emergency Orders by Certificate Type, Fiscal Years 1990-97

In fiscal years 1990 through 1997, most violations that led to the issuance of emergency orders took many months to investigate, issue emergency orders, and resolve. For more than half the cases, over 13 months passed between the date of the violation and the final resolution of the case. Once FAA learned about the violations, about 2 percent were resolved within a month and 63 percent within a year, while the remaining 37 percent of the cases took more than a year to resolve. (See table IV.1.) After the issuance of the emergency order, cases were not resolved until any appeals were completed and certificates were returned to FAA. At each step, the process was potentially subject to delays, some of which were not under FAA's control.

Table IV.1: Days Needed to Investigate, Issue Emergency Orders, and Resolve Cases, by Percent of Cases, Fiscal Years 1990-97

Amount of time elapsed	Percent of cases resolved from date of violation[a]	Percent of cases resolved from date known to FAA[b]
10 days or less	<1	<1
30 days or less	2	2
180 days or less	23	34
365 days or less	45	63

[a]The median time elapsed was 401 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

[b]The median time elapsed was 261 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

Source: GAO's analysis of data from FAA's Enforcement Information System.

FAA Learned of Many Violations a Month or More After They Occurred

In 70 percent of the cases in which FAA issued emergency orders, the agency did not learn of the violation on the date that it occurred. FAA learned about approximately 30 percent of the violations on the date that they occurred and about nearly half of the violations within a month of their occurrence. But discovering violations often took months or years: While FAA learned of 87 percent of the violations within a year of their occurrence, it did not learn of the remaining 13 percent of the violations for from just over a year to nearly 17 years from the date of occurrence. (See table IV.2.)

Table IV.2: Number of Days Between the Date of Violation and the Date FAA Learned of the Violation, by Percent of Cases, Fiscal Years 1990-97

Amount of time elapsed[a]	Percent of cases
10 days or less	41
30 days or less	47
180 days or less	79
365 days or less	87

[a]The median time elapsed was 44 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

Source: GAO's analysis of data from FAA's Enforcement Information System.

FAA learned more quickly about violations related to some types of certificates than about those related to other types. While a pilot's deviation from an assigned flight altitude may be detected promptly by an air traffic controller, FAA might not learn about a falsification of maintenance records until years after the repair was made, according to the Acting Director of Flight Standards. FAA became aware within 5 days of half of the violations that resulted in the issuance of emergency orders to revoke or suspend pilot licenses. These time frames were significantly longer for cases involving medical certificates (74 days) or mechanic certificates (131 days).

Investigation of Violations and Issuance of Emergency Orders Generally Took Months

FAA's investigation of violations that led to emergency orders and the issuance of those orders generally took months to complete. FAA completed its investigation and case preparation and issued the emergency order to revoke or suspend the operating certificate within a month for 11 percent of the cases, but about one-third of the cases took longer than 6 months. While FAA does not always learn of violations promptly and has little control over the time needed for resolution once it issues an emergency order, the agency has more control over the time its program office staff needs to investigate a possible violation and its legal staff needs to prepare and issue the emergency order. As discussed below, however, many factors may influence the amount of time needed for investigation or review and preparation of the case by legal staff.

Program Office Staff Completed Half the Investigations in Under 3 Months

For half the cases closed in fiscal years 1990 through 1997, less than 3 months elapsed between the time that FAA learned of the violation and the time that the program office completed its investigation and gave the case to FAA's legal staff to prepare the emergency order. While about 19 percent of the investigations were completed in 30 days or less, about

three-quarters were completed within 6 months, while the remaining one-quarter required 6 months or more. (See table IV.3.)

Table IV.3: Days Spent by Program Office Staff Investigating and Reviewing a Case Before Forwarding It to Legal Staff, Fiscal Years 1990-97

Amount of time elapsed[a]	Percent of cases
10 days or less	6
30 days or less	19
180 days or less	76
365 days or less	92

[a]The medium elapsed time was 83 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

Source: GAO's analysis of data from FAA's Enforcement Information System.

FAA Order 2150.3A describes the process for program offices to follow in investigations once a potential violation has been identified. Inspection staff gather evidence; interview witnesses, if appropriate; prepare the draft enforcement case file; and have the proposed emergency revocation or suspension reviewed by local and regional program office managers. Typically, we found that cases were with the program office for investigation four times as long as they were with the legal office preparing the emergency order. Not all of this time was necessarily spent on the investigation, however. According to the Acting Director of the Flight Standards Service, safety inspectors usually have many other ongoing responsibilities, including inspections, accident investigations, and recurrent training, as well as other enforcement cases.

Some types of violations may take longer to investigate. For example, it may take time to obtain and review records to determine whether an aircraft was actually available and used to perform required flight training as claimed in an airline's training records, according to the Acting Director of the Flight Standards Service. In addition, he said that violations involving the falsification of records may require a court order and search warrant to obtain documents. Finally, certain types of cases, such as those in which unapproved parts were alleged to have been used, may involve a number of different customers and suppliers, as well as extensive coordination with the Federal Bureau of Investigation or other law enforcement agencies. Similarly, if FAA learns from a comparison of medical certificates with data in the National Driver Register[1] that a pilot

[1]The National Driver Register is a central repository of information on individuals whose licenses to operate a motor vehicle have been suspended, canceled, or denied by any state. It contains information on persons who have been convicted of serious traffic-related violations, such as driving while impaired by alcohol or other drugs.

may have drunk driving convictions, weeks or even months may be needed to obtain the corroborating evidence from state or local court records, according to the Manager of the Compliance and Enforcement Branch in FAA's Civil Aviation Security Division. Our analysis showed that violations related to certain types of certificates generally required longer to investigate. While the program office took about 60 days to investigate half of the cases to revoke or suspend pilot certificates, investigation time frames were longer for half the mechanic certificates (3 months) and medical certificates (nearly 8 months). (See table IV.4.)

Table IV.4: Median Number of Days Before Program Office Staff Forwarded Case to Legal Staff, by Certificate Type, Fiscal Years 1990-97

Type of certificate	Median number of days
Medical	234
Mechanic	92
Pilot	63
Other[a]	54

Note: The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.

[a]Other operators include, for example, airport operators, agricultural operators, scheduled and on-demand air carriers, scheduled cargo carriers, and repair stations.

Source: GAO's analysis of data from FAA's Enforcement Information System.

FAA Legal Staff Issued Half the Emergency Orders in 20 Days or Less

Half of the cases processed in fiscal years 1990 through 1997 spent 20 days or less with FAA's legal staff for case preparation and the issuance of an emergency order. About one-third of the cases took 10 days or less from the time the legal staff received the case until it issued the emergency order, and emergency orders were issued within 6 months for 94 percent of the cases. The remaining 6 percent of the cases took longer than 6 months from the date the legal staff received the case until it issued the emergency order. (See table IV.5.) According to the Assistant Chief Counsel for Enforcement in FAA's Office of the Chief Counsel, even after cases are forwarded to the legal staff, they sometimes require additional investigation to have sufficient evidence to support the issuance of an emergency order. In such cases, the legal staff must request additional documentation from the program office's investigative staff. Typically, FAA's legal staff had a case for about one-fourth as much time as the program office needed for the investigation.

Table IV.5: Days Spent by Legal Staff After Receiving Investigated Case to Prepare the Case and Issue the Emergency Order, by Percent of Cases, Fiscal Years 1990-97

Amount of time elapsed[a]	Percent of cases
10 days or less	32
30 days or less	61
180 days or less	94
365 days or less	98

[a]The median time elapsed was 20 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

Source: GAO's analysis of data from FAA's Enforcement Information System.

The time needed to issue emergency orders varied less by certificate type than did the time needed for investigation. For all types of certificates, FAA legal staff issued the emergency order for over half the cases within 30 days of receiving it.

Case Resolution Required Additional Time

Once FAA issued an emergency order, it needed additional time to resolve a case. In fiscal years 1990 through 1997, half the cases were resolved within 73 days of the issuance of the emergency order. While nearly one-third of the cases were resolved within 30 days, 72 percent of the cases were resolved within 6 months, while the remaining 28 percent required longer than 6 months to resolve. (See table IV.6.) Time frames for case resolution were somewhat longer for half the cases involving mechanic certificates (over 96 days) and medical certificates (over 70 days).

Table IV.6: Days Between Issuance of an Emergency Order to Case Resolution, by Percent of Cases, Fiscal Years 1990-97

Amount of time elapsed[a]	Percent of cases
10 days or less	16
30 days or less	30
180 days or less	72
365 days or less	86

[a]The median time elapsed was 85 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

Source: GAO's analysis of data from FAA's Enforcement Information System.

According to the Assistant Chief Counsel of FAA's Enforcement Division, several factors may delay case resolution. First, it may be some days or weeks before the individual or aviation entity returns the operating certificate to FAA and the case can be closed out. In addition, he said that cases may be appealed before NTSB and the U.S. Court of Appeals. NTSB

administrative law judges hear appeals, and their decisions may be appealed again by the violator or FAA before the full Board. NTSB's rules call for a decision within 60 days. The Assistant Chief Counsel said, however, that some violators waive their right to this expedited review of emergency cases and have their cases reviewed together with other nonemergency certificate actions, which may take 1 to 2 years before a final ruling is issued. NTSB heard appeals on 1,277 emergency order cases in fiscal years 1990 through 1997. Violators may also appeal to the U.S. Court of Appeals, which often requires a year or more before a decision, according to the Assistant Chief Counsel of FAA's Enforcement Division. He noted that the decision to appeal and the time needed for case resolution following the issuance of an emergency order are not within FAA's control.

Recommended Type of Emergency Action Compared With Other Final Actions Taken, Fiscal Years 1990-97

	Emergency action initially recommended		
Other final actions taken	**Revocation**	**Suspension**	**Total**
Certificate expired	29	103	132
Successful reexamination	25	163	188
Civil penalty (fine)	21	6	27
Unable to locate certificate holder	11	11	22
Consent order[a]	6	0	6
Waiver of penalty under the Aviation Safety Reporting Program[b]	2	0	2
U.S. attorney declines to prosecute	2	0	2
Referred to U.S. attorney	1	0	1
Cease-and-desist order[c]	1	0	1
Unspecified	109	131	240
Administrative	0	1	10
Total	**207**	**413**	**620**

[a]A consent order ordinarily includes an agreement that the violator will take corrective and remedial action as a condition for the suspension or forgiveness of a portion of the sanction or, in some cases, a modification of the proposed sanction.

[b]The Aviation Safety Reporting Program is a voluntary self-disclosure program for pilots established in April 1975. In exchange for self-disclosure of information on pilot errors, which are reported in a database administered by the National Aeronautics and Space Administration, FAA generally agrees not to take legal action in response to reported unintentional violations.

[c]A cease-and-desist order is an order of an administrative agency or court prohibiting a person or business from continuing a particular course of conduct.

Source: GAO's analysis of data from FAA's Enforcement Information System.

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